

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

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:
UNITED STATES OF AMERICA :
:
: Case No. 1:16-cr-228
-vs- :
:
RUSLANS BONDARS, :
Defendant. :
:
-----:

SENTENCING HEARING

September 21, 2018

Before: Liam O'Grady, USDC Judge

APPEARANCES:

Kellen S. Dwyer, Laura Fong, and C. Alden Pelker,
Counsel for the United States

Jessica N. Carmichael and Yancey Ellis,
Counsel for the Defendant

The Defendant, Ruslans Bondars, in person

1 THE CLERK: The Court calls case 1:16-cr-228, the
2 United States of America versus Ruslans Bondars for sentencing
3 and motions.

4 May I have the appearances, please, first for the
5 Government.

6 MR. DWYER: Good morning, Your Honor. Kellen Dwyer
7 for the United States. With me is Laura Fong from the U.S.
8 Attorney's Office. As well as Alden Pelker from the Computer
9 Crimes and Intellectual Property Section.

10 And Ryan Dickey is also here, I don't know if he is
11 going to come up, but he is from CCIIPS as well.

12 THE COURT: Yeah, I remember him vaguely.

13 MR. Dickey: Good morning, Your Honor.

14 THE COURT: Good morning to you all.

15 MR. CARMICHAEL: Good morning, Your Honor. Jessica
16 Carmichael and Yancey Ellis on behalf of Mr. Bondars, who is
17 present with the assistance of an interpreter.

18 THE COURT: All right, good morning to each of you.

19 Let's swear our interpreter, please.

20 NOTE: The interpreter is sworn.

21 THE INTERPRETER: For the record, Roman Volsky, U.S.
22 court professionally qualified Russian language. Good morning,
23 Your Honor

24 THE COURT: Good morning to you, and thank you for
25 serving with us again today.

1 THE INTERPRETER: Thank you, Your Honor.

2 THE COURT: All right. This comes on for sentencing,
3 but also a motion by Mr. Bondars for a judgment of acquittal or
4 for a new trial under Rules 29 and 33. And why don't we begin
5 there.

6 Ms. Carmichael, I have read the pleadings, and I will
7 hear anything else you would like to say.

8 MS. CARMICHAEL: Your Honor, I don't have too much to
9 add other than what's in our pleadings. There is just one
10 factual issue that I wanted to clear with the Court. And that
11 is this issue of the Ulbricht case and whether or not the
12 defense argued for legitimate purposes in the Ulbricht case.

13 It seems that defense and the Government were at an
14 impasse on this particular issue. I read the quote from the
15 Government's brief that likened it to eBay for drugs, and still
16 I did not find that that factually meant that the defense was
17 arguing that there were legitimate users to the service.

18 I contacted the defense lawyer, the lead defense
19 lawyer for Ulbricht who I have spoken with before on other
20 cases, and I can just proffer to the Court that he said that in
21 their defense they never argued to legitimate transactions that
22 would have negated the intent in that case. In that case it
23 was an identity defense.

24 So I wanted to respond to that because it went
25 directly to the Government's argument that Mr. Bondars was

1 contesting that his company or his service was too big to jail,
2 it created this perverse incentive. And, Your Honor, we
3 dispute that because we think that the inquiry first begins
4 with not how many users there are, but whether or not there
5 were any legitimate users. And if there are no legitimate
6 users in a service, then every agreement would be illegal, you
7 wouldn't have to know the date, time, place of the agreement to
8 commit the crime.

9 When you move towards a company that has both
10 legitimate and illegitimate users, that's when we're arguing
11 that you need to get more into the realm of knowing not
12 specifics of a crime, but knowing something more than they have
13 the word "hacker" in their e-mail address.

14 And so, we just think that our position sort of
15 protects all online businesses because certainly large online
16 businesses have legitimate and illegitimate users and,
17 therefore, there is a heightened need to know more about the
18 agreement that was formed.

19 THE COURT: All right. Thank you, Ms. Carmichael.

20 Mr. Dwyer.

21 MR. DWYER: Thank you, Your Honor.

22 I think just to the last point, I think myself and
23 defense counsel are both right to an extent. Defense counsel
24 is referring to the trial defense, which is, it wasn't me, I
25 wasn't the one who ran Silk Road.

1 What I was referring to is the motion to dismiss that
2 happened before trial, he first made the argument that this is
3 not a criminal conspiracy because we're just like eBay, it
4 could be used to buy or sell anything, and people buy and sell
5 drugs, but I am not responsible for that.

6 But, I mean, to the extent that defense counsel is
7 suggesting that it would have been a defense in Silk Road to
8 say that, well, maybe a thousand people are using this to buy
9 and selling drugs and that was the intent, but as long as one
10 person isn't or as long as you don't prove that everyone was
11 engaged in a crime, that it's not a conspiracy, that's
12 incorrect as a matter of law. Conspiracy only requires two
13 people to agree to an unlawful agreement.

14 And then finally, I will say in our motion papers we
15 focus on the legal point that we only had to show two people
16 for conspiracy. But I will say that there was more than enough
17 circumstantial evidence at trial for a reasonable juror to
18 infer that while the entire purpose of this site is to promote
19 hacking, it was advertised exclusively to hackers, had a
20 reputation among the hackers who testified as being for crime,
21 so a reasonable juror could say, well, these 30,000 member they
22 got, I'm going to infer that many of them, if not most, were
23 using it for its intended purpose.

24 THE COURT: All right, thank you.

25 Well, I looked at the Ulbricht case after it was

1 cited. And really the defense is very close to the Sony versus
2 Grokster case which deals with infringement and having
3 infringing and non-infringing uses. It's an interesting theory
4 to the extent it was proposed, but it doesn't apply to the
5 criminal statutes here.

6 And the evidence at trial that the jury considered in
7 finding Mr. Bondars guilty of three out of the four offenses
8 was specifically for the criminal involvement in this
9 enterprise and Mr. Bondars' role in it, and the many e-mails
10 back and forth between he and Mr. Martisevs, which demonstrated
11 knowledge of the nature of their business and the unlawfulness
12 of it. And the marketing strategy. The knowledge that Mr.
13 Bondars had about the arrest of the customer from the U.K.
14 There was a significant amount of evidence which demonstrated
15 knowledge of the criminal nature of the customers who were
16 using this Scan4you service.

17 So I am going to deny the motion both for acquittal
18 and a new trial. And, of course, your exception is noted.

19 There are multiple objections to the presentence
20 report. The calculation of the loss amount, of course, is the
21 most significant, but also the leadership role. And why don't
22 I hear from you, Ms. Carmichael, on that at this time.

23 MS. CARMICHAEL: Thank you, Your Honor.

24 On the factual objections, I forgot to include the
25 factual objection to -- in my memo I forgot to include the

1 factual objection to the 404(b) evidence being presented in the
2 presentence report as related to the offense. I just wanted to
3 add that.

4 With respect to the remaining Guidelines objections,
5 Your Honor, I don't have significant argument on those other
6 than what's already been presented in the briefs.

7 The only aspect that I wish to say more on is on the
8 acceptance of responsibility aspect in response to the
9 Government's reply brief. That is, that making legal
10 challenges to the Government's case, which we did in this
11 matter, and arguing the legal challenges to the foreseeability
12 of the loss amount, which, Your Honor, the jury did agree in
13 small part with the defense on one count, those are not taking
14 positions that the Government is alleging in its brief, that
15 Mr. Bondars is categorically denying everything to do with
16 Scan4you.

17 Mr. Bondars through counsel admitted that he was the
18 technical director for Scan4you. He admitted that he knew who
19 this service was being marketed to.

20 And, Your Honor, I think also worth noting is that
21 through counsel at trial Mr. Bondars also acknowledged that he
22 was not completely forthcoming with the FBI when he was first
23 involved. And I can tell the Court that we are taking the
24 slightly unorthodox step of having the Court hear from Mr.
25 Bondars at the end of sentencing here today as well.

1 So that's what I would like to say on acceptance,
2 Your Honor. The rest of the Guidelines objections we will
3 submit on our briefs.

4 THE COURT: All right, thank you.

5 Do you want to respond?

6 MR. DWYER: Just briefly, Your Honor.

7 This is not a case where the defendant admitted all
8 the facts and just argued legal objections. He has not
9 admitted the core of the conduct, which is that he designed
10 Scan4you for the purpose of assisting computer hacking. He has
11 not admitted that. Counsel has not admitted that. Maybe he
12 will admit that later today.

13 He also hasn't taken any responsibility for all the
14 other hacking schemes that are documented in the PSR. He
15 hasn't taken responsibility for creating doorways that
16 redirected Web traffic to malicious sites. Maybe he will take
17 responsibility today.

18 He hasn't taken responsibility for writing encrypting
19 malware. For hacking tens of thousands of computers in the
20 United States, or using the SpyEye botnet, for using a Bitcoin
21 miner, for his work for EvaPharmacy.

22 And I guess I will hold off on the factors, but this
23 is a significant concern.

24 MS. CARMICHAEL: Your Honor, may I respond to the
25 doorways?

1 THE COURT: Yes.

2 MS. CARMICHAEL: These other 404(b) argument -- well,
3 404(b) evidence the Government submitted, I would just like the
4 Court to consider the fact that the FBI and the Latvian police
5 seized every single electronic device it could get its hands on
6 at Mr. Bondars' place of employment as well as Mr. Bondars'
7 residence. And the end result of that was that Mr. Bondars
8 chatted about these endeavors, but these are uncharged,
9 unproven conduct that the Government is arguing here today.

10 And I ask the Court not to rely on uncharged,
11 unproven conduct in its sentencing or in the Guidelines
12 decisions.

13 THE COURT: All right. Well, I think the Guidelines
14 have been properly calculated. The loss amount, of course, is
15 astronomical, but it's a result of Mr. Bondars having aided and
16 abetted a significant number of malware developers who were
17 very interested in escaping the antivirus security features of
18 all the companies that they were hacking, and why Scan4you
19 became the most popular of these software programs in the
20 world.

21 And the damage caused has been properly identified
22 and assessed to the extent that it could be. And I find that
23 the Probation Office has properly reviewed the evidence and
24 properly calculated the loss amount.

25 And also Mr. Bondars' leadership in this conspiracy.

1 And there is no doubt that he was a leader of the technical
2 side of Scan4you. And that it involved five or more
3 participants. And that it created havoc in the community and
4 was very extensive.

5 So under 3B1.1, the leadership role, I feel it was
6 also proper. And the rest of the Guideline calculations follow
7 the clear requirements under the Guidelines.

8 The Guidelines, as a result, are way over the 43,
9 which is the total offense level that can be calculated. He's
10 a Criminal History Category III. The restricted Guideline
11 range because of the maximum statutory provisions for the three
12 charges is 420 months. And supervised release of one to
13 three years on each of those charges.

14 Mr. Bondars, did you go over the presentence report?

15 THE DEFENDANT: (In English) Yes, Your Honor.

16 THE COURT: Any other corrections or additions you
17 want made at this time?

18 THE DEFENDANT: (In English) No, Your Honor.

19 THE COURT: All right. Have a seat then, sir.

20 I will file the report without amendment. As I have
21 said, I have read the submissions of the parties, those on the
22 record and those submitted under seal recently.

23 Mr. Dwyer, I will hear anything you would like to say
24 about sentencing at this time.

25 MR. DWYER: Thank you, Your Honor. On the first

1 point about all his other hacking schemes that were documented
2 in the PSR and our papers, this is not someone just discussing
3 in theory, we could do this. They are not discussions, they
4 are evidence that it happened.

5 Like there is one, which is on page 16 of the Skype
6 chats, in the PSR, 67, Martisevs says: Can you give me an
7 approximate number of rabbits we have online per day?

8 And we heard that rabbits means victim computers.
9 Bondars says: We had 15,000 yesterday. It is usually less on
10 weekends, otherwise there are about 20,000.

11 This is not just talk. It's evidence that it
12 happened. And the chats don't just speak for themselves. Mr.
13 Martisevs testified, and as the Court knows, walked through
14 them line by line and explained what was going on. Which is
15 exactly what it sounds like, they were committing crimes.

16 That is certainly relevant for the Court's sentencing
17 factors, particularly whether somebody is an ongoing threat to
18 the United States. And when you have someone who is this
19 innovative and has been doing this many crimes for this long,
20 that is a major concern.

21 Now, the defense counsel has pointed out in their
22 briefs that they say, well, Mr. Bondars has matured since 2008.
23 There is not evidence of that. The evidence is that on the day
24 he was arrested, the last day he was free, the Latvian police
25 found \$30,000 in cash, \$100 bills, in his apartment. That is

1 not someone who has moved on from crime. That is someone who
2 is still very much involved.

3 When he gets back to Latvia, he is not going to have
4 a Probation officer. The United States' ability to monitor him
5 is going to be very limited. So the Government is very
6 concerned about an ongoing threat here.

7 And then finally, I can't emphasize enough his
8 contribution to organized computer crime. The Court received
9 letters this week from Symantec and Trend Micro, which I think
10 did a great job of explaining just how Scan4you undermined and
11 impeded their ability to protect client computers.

12 But actions speak louder than words. The Court also
13 heard a lot from defense counsel at trial about how four years
14 ago Trend Micro conducted their own investigation into Scan4you
15 and went to significant lengths to do that. But why would
16 Trend Micro do that? Trend Micro is one of the largest
17 antivirus companies in the world, it has \$40 billion a year
18 roughly in revenue. Why is it spending its time investigating
19 Scan4you, a company with two people?

20 The answer is because Scan4you was undermining the
21 ability of Trend Micro and every other antivirus company to do
22 their job and to protect their clients.

23 This is a crime with systemic harm, and we would ask
24 that the Court's sentence reflect that.

25 THE COURT: All right, thank you.

1 All right, Ms. Carmichael.

2 MS. CARMICHAEL: Your Honor, I could spend awhile
3 talking about the Guidelines and nitpicking at the underlying
4 lack of empirical basis for those. I outlined that in my
5 brief, Your Honor, and I am not going to spend time talking
6 about the Guidelines this morning.

7 And I am not going to do that because the Court has
8 before it data points in this case that are far more relevant,
9 far more applicable to Mr. Bondars' situation than the
10 Guidelines. And those data points are the sentences of others
11 involved in this very case.

12 We have Shames, who received six months. Huddleston,
13 who received 48 months. Vartanyan, who received 54 months.
14 Belarozov, who received 60 months. And the person known as
15 refUD.me who received two years in the U.K.

16 And the Government's argument with respect to those
17 sentences is that they are not similarly situated because those
18 individuals pled guilty and Mr. Bondars went to trial. Your
19 Honor, in essence, what the Government is saying is that
20 pleading guilty -- or going to trial and not pleading guilty is
21 worth an extra 30 years in prison.

22 Your Honor, the Sixth Amendment right to trial would
23 be completely undermined if going to trial meant an extra
24 30 years in prison.

25 And I also wanted to talk just for a minute on the

1 cases that the Government cited where those defendants went to
2 trial. Those cases are not similar to Mr. Bondars' situation.
3 We have one case that the person laundered \$250 million, taking
4 proceeds of illegal activity. Another person who ran a Web
5 site that sold stolen credit card numbers, including ones that
6 he himself stole via hacking. Another one who developed and
7 sold a massive banking trojan, sold malware itself. And then
8 another one that offered 40,000 stolen credit card numbers with
9 a botnet -- and a botnet with 500,000 infected computers.
10 Those cases are not similar to the conduct that Mr. Bondars
11 engaged in.

12 Your Honor, after the Government submitted its reply
13 brief, I did look up some DoJ press releases of other
14 individuals involved in cyber crimes who went to trial, Your
15 Honor. And I found three cases in particular. Mittesh Das,
16 who went to trial, was ordered to pay \$1.5 million in
17 restitution. He, after a jury trial, was sentenced to
18 24 months imprisonment. He submitted malicious code to servers
19 that handled nearly 200,000 U.S. Army Reservists' employment
20 and personnel actions. That person got 24 months.

21 We have Fraser Thompson, who had a three-week trial,
22 and he ripped off everyday cell phone users at \$10 a month,
23 netting over \$100 million in illegal profits. And he
24 personally received \$1.5 million for that. He was sentenced to
25 five years, Your Honor.

1 And finally, Your Honor, there was Nicholas -- excuse
2 me, Fabio Gasperini, and he spread malicious software onto
3 computer servers in the United States and around the world and
4 hacked into them. He had a botnet that encompassed over
5 100,000 computers around the world, and he was sentenced to,
6 after a trial, Your Honor, to one year of imprisonment.

7 So, Your Honor, there are trials that have resulted
8 in excessive time, and there have been trials that have
9 resulted in reasonable amounts of time. Simply going to trial
10 should not have the weight of 30 years, Your Honor.

11 And I wanted to talk just for a second, Your Honor,
12 about the decision to go to trial. Mr. Bondars went to trial
13 because his lawyers advised him to go to trial. We advised Mr.
14 Bondars that we could not reach a plea agreement that we
15 believe incentivized pleading and that he should proceed to
16 trial.

17 The Government touched on this a little bit about
18 cooperation. I am afraid they would have been woefully
19 disappointed in Mr. Bondars' cooperation. Like many of these
20 online individuals, his communications, all of the information
21 that he had was online. And the Government had all of that
22 communication. And his server, and the Government had that
23 already as well.

24 Going to trial, we made arguments about the legal
25 challenges to the case, that the Government legally had not

1 made its case, and which the jury found for the defense on one
2 count, that the Government had not legally made its case. And
3 I said this before about Mr. Bondars, he did not deny that he
4 ran Scan4you. He did not deny that he knew who it was
5 advertised to. He did not deny that he was not forthcoming
6 with the FBI.

7 And he didn't take the stand, Your Honor. He did not
8 take the stand and he did not lie to this Court. And I think
9 that that should be worth something, Your Honor. Making legal
10 challenges that the Government can't make their case is not the
11 same thing as taking the stand and lying.

12 In the Government's brief the Government spends pages
13 and pages detailing the amount of damage that the Citadel
14 malware caused. And clearly the Citadel was malware that
15 caused a lot of damage.

16 Your Honor, the Court heard from two actual
17 perpetrators of the Citadel, someone who helped develop that
18 malware, and someone who he himself actually used and deployed
19 that malware to hack. And those individuals received five
20 years, Your Honor, the actual perpetrators of the Citadel. And
21 those individuals were Russian citizens, people who cannot be
22 supervised outside of the United States.

23 And the same thing with the Limitless Logger, Your
24 Honor. The Government spends pages and pages detailing the
25 damage caused by Limitless Logger. The Court has had before it

1 two of perpetrators, the actual developer of the Limitless
2 Logger and someone who distributed the Limitless Logger, and
3 that individual got six months and the other individual got
4 48 months.

5 Mr. Bondars was convicted of aiding and abetting
6 these individuals. He, as an aider and abettor, the Government
7 is asking for seven times the highest sentence of one of the
8 actual perpetrators of the crime.

9 And I also find it slightly bizarre logic, Your
10 Honor, that a person such as Belorossov, who actually deployed
11 and used the Citadel, is only responsible for the computers
12 that he infected and the loss associated with those computers
13 that he infected, but that an aider and abettor of Mr.
14 Belorossov, a convicted aider and abettor of Mr. Belorossov is
15 sentenced higher than he himself.

16 Finally, Your Honor, I just wanted to speak a little
17 bit about the punishment, deterrence, and remorse in this
18 situation. And what Mr. Bondars can say later on this morning
19 is somewhat limited because of a possible appeal, but he will
20 talk to the Court, Your Honor. And I can represent that he
21 feels terribly about the situation, about having developed
22 Scan4you. And he feels terribly knowing now the damage that it
23 has caused.

24 And I can also represent, Your Honor, that this
25 experience has been extremely emotionally difficult for him.

1 It has deterred him from ever coming close to engaging in any
2 sort of conduct like this again. He was pulled from his home
3 country, taken to a foreign place where he didn't speak the
4 language, to be tried in a foreign system that he didn't
5 understand and couldn't even understand the words. And in that
6 sense, he has already been punished more harshly than Zachary
7 Shames and Taylor Huddleston.

8 And I would also like Your Honor to keep in mind when
9 fashioning a sentence in this case that Mr. Bondars is not
10 eligible for any of the Bureau of Prisons' programs that a
11 United States citizen would be eligible for, such as RDAP,
12 which takes time off of a prisoner's sentence. He is not
13 eligible for those programs.

14 He is also going to spend time in ICE custody after
15 he is released from incarceration. And I would ask the Court
16 to consider that time as well.

17 But he has learned an extremely difficult lesson here
18 today. He misses his family. He wants to go home. He wants
19 to be able to go back to his job, Your Honor.

20 And I want to say something about that as well. I
21 was in the Court, Your Honor, when the Court sentenced Zachary
22 Shames. And I know that Mr. Shames submitted a lot of letters
23 on his behalf, and in particular --

24 THE COURT: He was 15 years old. You know, there is
25 different world. Go ahead.

1 MS. CARMICHAEL: Well, Your Honor, I know that
2 something that was important to the Court in that situation was
3 that he had the support of his job, and that he was still
4 valued there, and that they still wanted him there.

5 And in that sense, Your Honor, Mr. Bondars does have
6 that as well. He is not a lost cause. He is not someone who
7 has nothing better to do with his time than to engage in any
8 type of illicit behavior. He is someone who is successful and
9 respected. And the letters show that even his subordinates
10 find him to be very compassionate as a boss and kind and
11 generous.

12 And at this point, Your Honor, he could still go back
13 to that job. And we would ask that the Court consider that.

14 The Government argues that Mr. Bondars should be
15 given a higher sentence because he is a foreign national and he
16 can't be supervised once he is released. Your Honor, I would
17 actually challenge that premise. There is probation in Latvia.
18 There are also MLATs. I'm sure that if the Government wanted
19 to find a way to keep tabs on Mr. Bondars, it could do so.

20 But secondly, Your Honor, I think that this logic is
21 a little bit convoluted in a sense because Mr. Bondars was in
22 Latvia. It was the United States that came and took Mr.
23 Bondars from Latvia and brought him here to prosecute him. And
24 then the Government argues that because he is in the United
25 States, he should be punished harsher. And I would like the

1 Court to consider that as well.

2 And I pointed out earlier that Mr. Belorossov and Mr.
3 Vartanyan received five years. And those are Russian citizens
4 who clearly cannot be supervised once those individuals are
5 released.

6 Your Honor, at its very core, the sentence that the
7 Government seeks is an astronomical disparity from the others
8 that have been sentenced in this case. And I would submit that
9 those sentences in this case, those have been thoughtful
10 sentences commensurate with the conduct that Mr. Bondars was
11 convicted of.

12 And I think that's a perspective that needs to be
13 brought to the table, Your Honor, because we have seen
14 individuals come before this Court who were convicted of
15 joining ISIS, individuals who were trying to blow up the United
16 States Capitol, MS-13 members, enticing minors, people
17 producing child pornography, all getting less time, far less
18 time than the Government is asking for in this case.

19 This is not a violent offense. There are no lives in
20 danger here. There are no physical harms to victims. And
21 that's not to minimize the financial damage that was caused
22 here, but I think there needs to be a little bit of perspective
23 in this case because this is something that with a little time,
24 effort, and money these companies can recover from.

25 So, Your Honor, we would ask that Mr. Bondars be

1 sentenced to a period of 18 months.

2 THE COURT: All right. Thank you, Ms. Carmichael.

3 All right, Mr. Bondars, this is your opportunity to
4 tell me anything you would like to before I sentence you.

5 Please come to the podium, sir.

6 THE DEFENDANT: Good morning, Judge O'Grady. I have
7 been in your courtroom many times, but this is the first time I
8 have been able to speak with you. I thank you for the
9 opportunity to speak.

10 THE COURT: Let me stop you there for one second
11 before I forget. You went to trial on a plea of not guilty.
12 You were found guilty of three of the counts, 1, 2, and 4. And
13 you have a right to appeal to the Fourth Circuit Court of
14 Appeals that finding and all the rulings that I made during
15 that trial, as well as any sentence that I impose.

16 So what you say here this morning in court, if there
17 was a retrial, if the case came back for a retrial, if you said
18 something that might hurt the case when it came back, you need
19 to make sure you understand that whatever you say here this
20 morning could be used against you in any other court
21 proceeding. Okay?

22 THE DEFENDANT: I understand you.

23 THE COURT: All right. Then please go ahead.

24 THE DEFENDANT: Thank you, Your Honor.

25 As you know, I was technical developer of Scan4you

1 Web site. I started this Web site with my friend Yuri to earn
2 some extra money.

3 I punish myself for the lack of foresight in creation
4 of Scan4you Web site. I am very sorry that Web site created by
5 me lead to such big consequence. I feel ashamed that some of
6 the Web site users used it for making such terrible damage.

7 I imagine that people like Mr. Smiley, Mr. Lee, and
8 Mr. Caple felt scared and unsafe when they learned that someone
9 had taken their personal information. I'm sorry for that too.

10 In the beginning, Scan4you was so small, but it got
11 much bigger, and it seemed it happened very fast. Time changed
12 so many things.

13 I have spent the past two years far, far away from my
14 family, my friends, people who I love, people who love me. The
15 situations that I got into have been very stressful for me and
16 for the people I love, and show me the value of this love and
17 how easy it is to lose this all.

18 I am sorry for my family for causing such pain. I
19 hope that whenever I get out of the jail and return home, my
20 job will be still available for me and I can live a normal
21 life. I plan to get married and I have a family -- no. And
22 have a family. I hope that you give me this chance as soon as
23 you can.

24 Thank you, Your Honor.

25 THE COURT: All right, thank you. Please remain

1 there.

2 So I said you have a right to appeal, and you must
3 file a notice of appeal. And speak to Ms. Carmichael about
4 that after today's proceedings.

5 You're a very bright young man, and you chose to
6 spend seven or eight years building this software program,
7 Scan4you, and to have Mr. Martisevs market it and do other of
8 the business functions. And you built it into the largest
9 criminal support for hacking forums in the world, with I guess
10 up to 30,000 members before you were taken down.

11 And there was no question for the jury and no
12 question in my mind that you knew the harm that you were
13 causing. The e-mail traffic between you and Martisevs, every
14 member of the public's awareness of the harm that these
15 different hacking enterprises were causing to the world
16 community are so well-known. There is zero chance that you
17 didn't know how damaging these malwares were that were using
18 your service to perfect their software so that it wouldn't be
19 detected by the antivirus security companies who were all
20 working -- as you also are aware, this security industry has
21 grown enormously, and the number of companies that are
22 dedicated and the amounts of money that are dedicated by every
23 corporation to try and void a Target incident or a Citadel
24 incident, it's on the forefront of every business model today
25 in the world.

1 And you were aware of all that, and you chose to do
2 it. And you didn't make a tremendous amount of money doing it,
3 but you were really good at it and you continued to perfect it.
4 And whenever you -- or several times during the e-mail
5 trafficking when you and Mr. Martisevs were talking, you were
6 saying, I'm still working, I'm still advancing the software
7 system. And, you know, you did a terrific job at it.

8 So you caused enormous harm through aiding and
9 abetting these different hackers and the malware that they
10 perfected with your assistance.

11 So Ms. Carmichael hit the real issue here, and that's
12 what's a fair sentence given you as a person and the fact that
13 this is your first conviction, notwithstanding the length of
14 time that you have been involved in this enterprise. And I
15 don't need to look at the 404(b) evidence to see that your
16 dedication to this unlawful enterprise is really disturbing,
17 the potential you have in the future if you are not deterred.
18 And there is also a need for general deterrence, but you
19 shouldn't be warehoused just because of a fear that you may get
20 out and go back into criminal enterprises.

21 So I'm looking at a young man who may make a decision
22 in the future who is going to do the right thing and work for
23 the right reasons, and I very much hope that that is the case.
24 But I don't have any confidence given what I know about you now
25 that that is definitely going to take place. So deterrence is

1 necessary. And also the seriousness of the offense, the
2 sentence must reflect that.

3 The disparity is the issue that is very real. Every
4 case stands on its own. The facts of every case are different
5 than in another case. As the Government points out, some
6 people got 27 years for the behavior that they believe was in
7 the same nature as yours. Others, Mr. Shames, he got, you
8 know, six months, but I think he was a very unique character.
9 Mr. Belorossov and the other Russian witness in our trial got
10 five years, and they got five years after they had signed
11 agreements to cooperate with the Government and had their
12 sentences reduced down to five years as a result of that.

13 I see the harm that you caused, as I have just gone
14 over, different, obviously, than that of the Citadel
15 perpetrators, but you were instead facilitating, aiding and
16 abetting enormous numbers of hackers. So you are in a more
17 unique sentencing position. But I find that the conduct is,
18 you know, very serious, went on for a significant length of
19 time.

20 And so, I don't think -- I think a sentence in excess
21 of those that Ms. Carmichael spoke of is necessary under the
22 3553 factors. And that a significant sentence is necessary.
23 Not 420 months as the Government urges, but a significant
24 sentence.

25 On Count 1, I'm going to sentence you to 60 months.

1 On Counts 2 and 4, I am going to sentence to you 168 months.
2 Those sentences will run concurrently.

3 I will sentence you to three years of supervised
4 release. A \$300 special assessment.

5 I will not impose a fine or costs because I find you
6 are unable to afford them.

7 If you are deported, I will order that you not return
8 to the United States without lawful authority to do so.

9 If you are not deported, I will order that you be on
10 standard conditions of supervised release and participate in a
11 computer monitoring program.

12 I will give you credit for time served waiting
13 sentencing.

14 Ms. Carmichael, do you have a designation?

15 MS. CARMICHAEL: Your Honor, we have two requests
16 with respect to designation. First, that Your Honor could
17 recommend Fort Dix as the facility.

18 And second, that Your Honor could recommend that a
19 portion of Mr. Bondars' sentence be served in Latvia so that he
20 is able to be closer to his family under the Prisoner Transfer
21 Treaty.

22 THE COURT: I am not going to recommend that. I will
23 leave that to you to make that recommendation to the Bureau
24 when you are working with them.

25 All right. Anything else in this matter?

1 MS. CARMICHAEL: Yes, Your Honor.

2 THE COURT: There is a forfeiture matter, yeah.

3 MS. CARMICHAEL: Yes. I am not sure whether Your
4 Honor wants to handle this -- this is just a logistical issue.
5 But should Mr. Bondars choose to appeal, he cannot afford an
6 attorney. I do have a financial affidavit from him, and we
7 would ask the Court that I be able to be appointed to his case
8 for that purpose.

9 THE COURT: I would appreciate it if you would take
10 the assignment on a court-appointed basis. Thank you for do
11 so.

12 MS. CARMICHAEL: Thank you, Your Honor. Would you
13 like the financial affidavit at this time?

14 THE COURT: Yes. There was a notice of forfeiture
15 submitted. And do you have any position on that at this time?

16 MS. CARMICHAEL: We do, Your Honor.

17 MR. ELLIS: Your Honor, we don't have any position on
18 the PayPal or the Paxum accounts. I think there was evidence
19 in the trial regarding those.

20 Regarding the Bitcoin, the Government seems to be
21 proceeding on that the service in and of itself was illegal.
22 And we disagree with that as far as the evidence that came
23 through at trial. We believe that this is a situation more
24 under section 981(a)(2)(B) where it was a lawful service used
25 in an illegal manner.

1 And, therefore, the Government would need to show by
2 a preponderance that specifically with regards to their
3 forfeiture request, the Bitcoin was used and is directly
4 traceable to a violation of section 1030.

5 I don't think there is any evidence that anyone ever
6 paid with Bitcoin or any evidence that there was any scan or
7 file that was used to commit a cyber attack or someone paid for
8 the scan with Bitcoin.

9 So I don't think the Government has met their burden
10 with regard to the Bitcoin. However, we do recognize that the
11 Bitcoin could be considered substitute assets. And just
12 depending on whatever award is awarded by the Court, it could
13 be taken, all of it or some of yet.

14 Yesterday, for the Court's information, Bitcoin was
15 worth 6,512.80, \$6,512.80 as of yesterday.

16 And then regarding lastly, Your Honor, regarding the
17 money judgment. Reading the Government's brief, it just seems
18 like they can't possibly meet their burden in that regard, it
19 just seems highly speculative. The Government is just making
20 guesses about the proportion of clients that paid monthly
21 versus per scan. I don't think there is enough information for
22 the Court to make a finding for a money judgment.

23 So we would ask the Court not to make a finding for a
24 money judgment at this time.

25 THE COURT: All right, thank you.

1 The Government want to be heard?

2 MS. FONG: Yes, Your Honor. With respect to the
3 Bitcoin payments, every single transaction that went into the
4 one Bitcoin wallet that we put forth in the forfeiture papers
5 was a Scan4you transaction. And there were three places where
6 we found evidence of that Bitcoin wallet.

7 First the Bitcoin wallet, evidence of that was found
8 on Mr. Bondars' Cooler Master computer that was seized from his
9 residence in Latvia.

10 Second, within his computer there was a ledger that
11 he maintained that detailed the Bitcoin transactions,
12 specifically for Scan4you customers.

13 Third, we know that Bitcoin was a method of payment
14 for Scan4you customers. Based on the evidence we presented at
15 trial, the Web site showed methods of payment, and Bitcoin was
16 one of them.

17 Turning to the ways that the Government has estimated
18 the amount that should go into the money judgment. The case
19 law is clear that forfeiture is mandatory in this case. The
20 Government only needs to prove by a preponderance reasonable
21 estimates of criminal proceeds. And here the \$4,000 figure of
22 profits per month was an estimate that Mr. Bondars himself
23 provided to the Government, and we cited that in our papers.

24 So we provided a number of different ways that the
25 Court can come to a reasonable figure for forfeiture. We have

1 put forth those numbers and figures to the Probation Office,
2 and they have adopted some of our calculations.

3 THE COURT: All right. Thank you, Ms. Fong.

4 All right, I will look at the forfeiture --

5 MR. ELLIS: Your Honor -- I am sorry.

6 THE COURT: Yes, Mr. Ellis.

7 MR. ELLIS: I just remembered one point based on Ms.
8 Fong's argument.

9 I went back and read Mr. Bondars' statement last
10 night. And what he actually said was during the last few years
11 of the service he thought it was averaging 4,000. So that was
12 not a lifetime estimate.

13 THE COURT: Okay. All right, I will look at your 891
14 arguments as well. And I will -- if I need any further
15 information on that, I will let you know.

16 All right, anything else in this matter?

17 MR. DWYER: Yes, Your Honor, just the restitution
18 request. Target had put forth an affidavit seeking
19 restitution. I have spoke with defense counsel. We are
20 hopeful that we can at least come to some sort of arrangement,
21 something that they won't necessarily agree to, but potentially
22 not object to. And working with Target as well to hopefully
23 work something out, and we can file papers on that.

24 THE COURT: All right. Do you have any inkling as to
25 when that would occur?

1 MR. DWYER: I think we could do it within 30 days if
2 that is acceptable to the Court.

3 THE COURT: Yes, that would be great. I just don't
4 want to lose track of it given the restitution order, the
5 statutory limitations there.

6 All right, that concludes our criminal docket. We
7 will take a brief recess, and we will come back with the civil
8 docket.

9 Thank you, counsel.

HEARING CONCLUDED

20 I certify that the foregoing is a true and
21 accurate transcription of my stenographic notes.

/s/ Norman B. Linnell
Norman B. Linnell, RPR, CM, VCE, FCRR